

**REMARKS**

Claims 57; 69; 81; and 82 have been amended.

Claims 57; 65; 69; 70; 71; and 81 to 84 remain in the application. Of these, claims 57 and 81 are the independent claims.

Claims 57 and 81 stand rejected under 35 U.S.C. §102(b) based upon Strasser et al. 4,838,282 (Strasser) or Scarfone et al (US 5,385,151) (Scarfone). Claim 65 also stands rejected under 35 U.S.C. §102(b) based upon Strasser. Claims 57; 69 to 71; and 81 to 84 stand rejected under 35 U.S.C. §102(b) based upon Jamshidi (US 5,807,275) (Jamshidi) or Byrne et al (US 5,538,009) (Byrne) or Tretinyak (US 4,630,616) (Tretinyak).

Independent claims 57 and 81 have been amended to define a tool system comprising a first functional instrument (which includes a trocar instrument in claim 57) and a second functional instrument (which includes a cannula instrument in claim 57) that fit together to form a composite instrument. Each instrument, before forming the composite instrument, includes a handle with specified finger gripping surfaces.

The handle of the first functional instrument includes first and second finger gripping surfaces. The surfaces are mutually sized and laterally spaced apart a first distance for gripping simultaneously by an index finger and a little finger of a hand (i.e. by spaced-apart fingers on opposite sides of a hand). The first functional instrument handle also includes a recess between the first and second finger gripping surfaces.

The handle of the second functional instrument includes third and fourth finger gripping surface mutually sized and laterally spaced apart a second distance less than the first distance for gripping simultaneously by two adjacent fingers of a hand.

As defined in amended claims 57 and 81, when the composite instrument is formed, the handle of the second functional instruments nests within the recess of the handle of the first functional instrument, to form a composite handle. The composite handle comprises the first, second, third and fourth finger gripping surfaces of the handles of the first and second functional handles resting in an adjacent and generally coplanar relationship for gripping simultaneously by all fingers of a hand, to transmit rotational and/or longitudinal forces to the composite instrument. As defined in the claims, the first finger gripping surface of the first instrument handle is presented for gripping by an index finger of the hand; the second finger gripping surface of the first instrument

handle is presented for gripping by a little finger of the hand; the third finger gripping surface of the second instrument handle is presented for gripping by a ring finger of the hand; and the fourth finger gripping surface of the second instrument handle is presented for gripping by a middle finger of the hand. This arrangement is shown, e.g., in Fig. 3 of the Specification.

None of the cited documents teaches or suggests the subject matter defined in amended claim 57 or new claim 81. Strasser, or Scarfone, or Jamshidi, or Byrne, or Tretinyak do not combine in a composite handle the finger gripping surfaces of a first instrument that accommodate gripping by opposite fingers of a hand (the little and index fingers) with the finger gripping surfaces of a second instrument that accommodate gripping by adjacent fingers of a hand, to thereby form a composite gripping surface for gripping simultaneously by all fingers of a hand (little, index, middle, and ring fingers). In Strasser, or Scarfone, or Jamshidi, or Byrne, or Tretinya, the finger gripping surfaces of the second instrument, and the second instrument alone, comprise the index, little, middle, and ring finger gripping surfaces for the composite instrument. In Strasser, or Scarfone, or Jamshidi, or Byrne, or Tretinya, the finger gripping surfaces of the first instrument do not at all contribute to the formation of finger gripping surfaces for the composite instrument. The handle of the first instrument merely rests on top of the finger gripping surfaces of the second instrument, forming no part of the finger gripping surfaces of the composite instrument. In Strasser, or Scarfone, or Jamshidi, or Byrne, or Tretinya, the index, little, middle, and ring fingers gripping the composite handle do not grip surfaces that, before formation of the composite handle, were on the first instrument handle. The index, little, middle, and ring fingers gripping the composite handle grip surfaces that, before formation of the composite handle, were only on the second instrument handle.

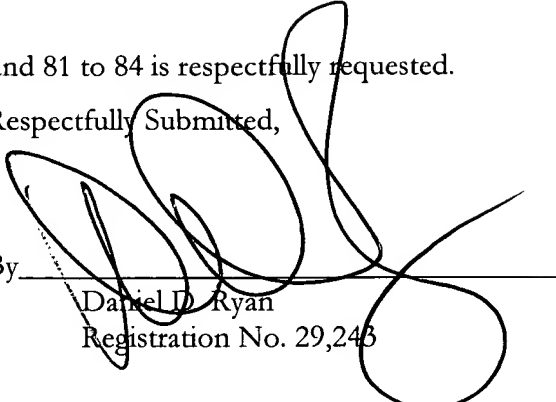
Applicant acknowledges the rejection of claims 57, 65, and 81 under the judicially created doctrine of obviousness-type double patenting, based upon US 6,575,919. Applicant will respond to an appropriate double patenting rejection by filing a terminal disclaimer at the time allowance of the amended claims is indicated, but for the double patenting rejection.

If the Examiner believes a telephonic discussion would expedite this application to allowance, the undersigned respectfully requests the opportunity to have that discussion.

Allowance of claims 57; 65; 69; 70; 71; and 81 to 84 is respectfully requested.

Respectfully Submitted,

By

  
Daniel D. Ryan

Registration No. 29,243

RYAN KROMHOLZ & MANION, S.C.  
Post Office Box 26618  
Milwaukee, Wisconsin 53226  
(262) 783 - 1300  
Customer No.: 26308